

OLYMPIA, WASHINGTON

October 7, 2003

10:30 a.m.

The State Finance Committee met in a special meeting after notice duly given to the press and radio of Thurston County.

Present: Michael J. Murphy, State Treasurer
Gary Locke, Governor
Brad Owen, Lieutenant Governor

Also Present: Allan J. Martin, Office of the State Treasurer
Tom Morrill, Office of the Attorney General
Jim Bemis, Montague DeRose & Associates
Nancy Adams, Office of the State Treasurer
Darlene DeRose, Montague DeRose & Associates
Rob Fukai, Department of General Administration
Rodney Wendt, Orrick Herrington & Sutcliffe
Alice Ostdiek, Foster Pepper & Shefelman
Vicki Cox, Office of the State Treasurer
Susan Musselman, Susan D. Musselman, Inc.
Shad Pruitt, Office of the State Treasurer
Mike Roberts, Office of Financial Management
Kristi Wolgamot, Office of the State Treasurer
Sue Melvin, Office of the State Treasurer
Svein Braseth, Office of the State Treasurer
Mark Lahaie, Department of General Administration
Craig Donald, Department of General Administration
Grant Fredricks, Department of General Administration
Brad Shannon, Reporter
Bill Starkey, Seattle-Northwest Securities
Rob Shelley, Seattle-Northwest Securities
Nancy Notter, Office of the State Treasurer
Suzanne Coit, Office of the State Treasurer
Jay Reich, Preston Gates & Ellis
Bob Campbell, Lehman Brothers
Barton Potter, Office of the State Treasurer
Jeff Caldwell, Department of Transportation
Amy Arnis, Department of Transportation
Jerry Long, House of Representatives
Cynthia Weed, Preston Gates & Ellis
John Finke, National Development Council
Margie Smitch, Office of the Attorney General
Hugh Spitzer, Foster Pepper & Shefelman
Cindy Edens, Wright Runstad & Co.

Robert Shelley, Seattle-Northwest Securities

Chairman Murphy said: (beginning of tape) to a Work Session, just for the purposes of this discussion, we would like to have a representative from the Office of Financial Management to enter into the record the certification that was provided to the Committee relative to the Tumwater Building Project. Mr. Roberts.

Mike Roberts said: Treasurer Murphy, I'm Mike Roberts from the Office of Financial Management. I did prepare the letter that is signed by Marty Brown, what's the date? I'm sorry, September 24. I prepared the letter basically with the certifications and the agreements from Department of General Administration. Marty did sign it and sent it to you.

Chairman Murphy said: So, you were able to determine that the proposal was within the realm of comparativeness with the other projects and other rental facilities within Thurston County?

Mike Roberts said: In so far as the lease costs, yes.

Chairman Murphy said: So, you did do an independent review.

Mike Roberts said: Yes.

Chairman Murphy said: Thank you. Are there any questions of the Office of Financial Management? Now I would like to call on Mr. Fukai, Director of Department of General Administration to, ah, give your pitch.

Rob Fukai said: Thank you, Mr. Treasurer, Members of the Committee. My name is Rob Fukai. I'm the Director of the Department of General Administration, proponents of the Tumwater Office Building Project. With me today to help answer any questions the Committee might have are: Deputy Director, Grant Fredericks, Chief Operating Officer of General Administration; the Project Manager for General Administration, Craig Donalds. Also representatives of the developer, that's Wright Runstad, the successful developer, Cindy Edens, I believe is here, Bob Campbell from Lehman Brothers, who served as the team's financial advisor and John Finke with the National Development Council. From the AG's Office, we have Margie Smitch who is the Assistant Attorney General assigned to General Administration to review all of our lease obligations. We also have Cynthia Weed of Preston Gates & Ellis who acted as Special Assistant Attorney General to make sure that we were in compliance with the required documents from the financing point of view. Let me just briefly introduce the project, and then we'll be open for discussion or questions from members of the Committee. This is a project that was Legislatively approved, a lease to develop an office building in Tumwater in the 2001 Legislature. The Tumwater Office Building will be a, on state owned land that is near the current Labor & Industries Building. That land was purchased from the Port of Olympia in 1993. Ah, GA developed design guidelines for this project. Ah, we issued a request for proposal in July, and in November of 2002, we juried a selection process which identified Wright Runstad as the successful lease developer. We have also reviewed the tenant program and have identified the Washington State Patrol as the lead tenant in the building. The Department of Transportation

will also be located in the building and that's in accordance with the co-location strategies that we have in order to create more efficient government. This combination brings two critical transportation agencies in a side-by-side basis to operate their day-to-day operation. The Washington State Patrol will be able to consolidate six of their centers into one. The Department of Transportation will also be um, centralizing some fragmented operations that they currently have. And then the benefit of jointly working together, ah, between the State Patrol and the Department of Transportation on a day-to-day basis will be realized. Of particular note is, ah, the ability for them to better coordinate their emergency management response, in their ah, commercial vehicle management, their collision reporting and analysis and also their wireless communications. Ah, we also have been in discussions with the Port of Olympia relative to the property. Ah, they had originally, when the property was purchased in 1993, they had a reversionary clause which allowed the property to go back to the Port if the state did not develop within ten years. Ah, since we were unable to meet that condition, we negotiated with the Port over this last summer and had negotiated an agreement to eliminate that reversionary clause so the state will be able to develop the property ah, as it wishes to the future. As you mentioned, Mr. Treasurer, we have accomplished the necessary reviews that the Legislature provided, including the review done by the Office of Financial Management. We have complied with all of the Legislative provisos accompanying this project, including the fact that agency occupancy cost will not exceed comparable private rental rates. And also, that the buy-out of any current leases that the Department of Transportation has or the Washington State Patrol has, will not add the cost of government. And we have obtained letters from those tenants certifying to that.

Rob Fukai said: So, before us today then, is the consideration of the State Finance Committee of the financing contract that underlies the development. This is a private lease development project, ah, which requires review of the lease contract in order for the private developer to begin the financing that they need to do in order to construct the building ah, for the State of Washington. So that, that's the action that we're asking for today and we do have a resolution, ah, drafted.

Chairman Murphy said: Thank you Mr. Fukai. Your staff provided me a briefing yesterday on this project and provided a one and a half page outline on it. And, ah, in the outline, it indicates that the developer proposal to finance the project, the 63-20 financing, will save the state of Washington \$4.7 million over, over the next cheapest financing available to them. What does that mean?

Rob Fukai said: What we did is we compared the state financing under the COP to the alternatives that were available to us. In this case we're looking at 63-20 financing under the Internal Revenue Service.

Chairman Murphy said: So your analysis concluded that if we were to do a 63-20, the state of Washington could save \$4.7 million compared to doing a COP?

Rob Fukai said: We concluded that, um, in our submission to the, OFM, we concluded that there's a net benefit of this project of \$6.6 million and that's a life-cycle cost analysis that's required.

Chairman Murphy said: Compared to?

Rob Fukai said: We did not, we did not break down in our proviso, the individual components.

Chairman Murphy said: So is this comparing it to a COP or is this comparing it to another 63-20?

Mr. Fukai said: It's comparing it to ah, financing by the state.

Chairman Murphy said: And who provided this financial advice to you?

Craig Donald said: The, ah, I'm Craig Donald [Facility Policy Analyst w/Department of General Administration]. The, ah, comparisons that you're talking about are referencing the \$4.6 million or that number, is related to 501(c)3, using the other available option that would be available to Wright Runstad. It compared 63-20 with 501(c)3 financing.

Chairman Murphy said: So, it's not a comparison to a COP?

Craig Donald said: No, it's not.

Rob Fukai said: Thank you Craig.

Chairman Murphy said: Okay. Ah, there was another question that arose and that is um, in, again, I'm working off your information you supplied. Any delay, will at best, add \$400,000 to overall costs but most likely could kill the project. I asked the question yesterday, ah, what comprises this \$400,000 and Mr. Fredricks indicated that this was, ah, a tax issue. Can you further identify what that number is.

Rob Fukai said: Yes, I'll ask the developers to respond, Wright Runstad. But first I would like to say that since the developers were identified in November of 2002, they have held together a construction team and a design team and cost estimates associated with their proposal at this time. And the difficulty that we face with this project and the challenge that we face is that the developers are experiencing all kinds of potential changes, potential increases in cost the longer this ah, ah, goes on. So, the \$400,000 figure is ah, a result of the patience of the developer as we move through our approval process and I would ask them to address that.

Cindy Edens said: Cindy Edens, Wright Runstad, as you stated, Rob stated, we have sat on our price. We bid this job in excess of a year ago. It was bid starting in June of last year and we've been able to hold our price to this point, but we were given a drop dead date by the contractor that they could see labor increases in relationship of when we'd actually start construction. We had originally, in our bid, had assumed that we would start construction by September of this year. And so, that's obviously not, we're not able to do that, we still need to finish our design. We need to start, and so we are assuming that if the worst case is labor increases starting next year and the following year because we're going to be delaying in start of construction. So that's what we're attributing those costs to.

Chairman Murphy said: Okay, so it's not a tax issue.

Cindy Edens said: No, it's labor issues.

Chairman Murphy said: Okay. Mr. Fukai I have a series of questions here, so if you don't mind. Um, also in your document you indicate a fundamental change at this point would be a breach of faith with the development community in support of this particular procurement process for this project. Ah, this project is different from virtually any other than I've seen in, in state government over, over the number of years I've been affiliated with the state government in that the authorization from the Legislature did not have a fixed dollar value in it. And then it, it basically says OFM verifies a number and then this Committee would then approve the financing piece. Um, I guess I'm confused here. What is this breach of faith with the development community? What would that be involving?

Rob Fukai said: In my judgment, there is a couple of factors to that. One is that, um, the commitment was for a public/private partnership in this instance.

Chairman Murphy said: Commitment by whom?

Rob Fukai said: By the acquisition of a privately developed lease purchase arrangement with a public/private partnership as opposed to a traditional government owned public works development project.

Chairman Murphy said: So this is not a Legislative mandate?

Rob Fukai said: Well, it, in my mind it's a Legislative mandate because the Legislation directs us in this, in this way. But, if you're asking my opinion of the, of the policy, I believe it's a good policy because it represents a balance of ownership of state facilities between the public sector and the private sector. And it represents in addition an alternative financing vehicle that could be available to the state during the future. So the breach of faith has to do with the length of time that the developer had been patiently and maybe not so patiently waiting for us to go through our process to make sure that we've accomplished all the Legislative provisos. Which at this time we have, except for the State Finance Committee's approval of the Leasing Contract.

Chairman Murphy said: I have, I have one final question. Ah, in your document, again, you identify a typical shorter term Treasurer-placed COP financing would not be affordable for tenants or allow the state to meet specific legislative requirements for this project. What evidence do you have to show to back up that statement?

Rob Fukai said: The document that we submitted to OFM for their review and certification identifies the lease cost associated with this project in its proposal. If we were to utilize a shorter term financing instrument, we believe it would drive the lease cost above the threshold required by the legislation which was to have the lease cost be comparable to current market leases that have taken place in Thurston County.

Chairman Murphy said: So I guess your presumption is, is that if we were to do a COP, it would be a shorter term than you have.

Rob Fukai said: Yes. And also, if we were to switch to the COP format at this point, ah, we would be required to start over as a project. In other words, the request for proposal went out and we accepted ah, a public or a private/public partnership using a 63-20. If we convert to the traditional COP finance method, we would have to begin our procurement process over again. Ah, and that would take approximately nine months and add significant cost to the project.

Chairman Murphy said: The Committee members may wish to note that the Legislative session before this last, there was a change by the Legislature on a bridge project in Tacoma. Ah, we were involved with the Speaker of the House on that ah, discussion. We provided him necessary information regarding that discussion. That particular project had been in motion for approximately seven years. Virtually both sides of the aisle, leadership and otherwise, were telling me 'the train's already left the station, we can't turn it around and this is a done deal'. 'Go away'. We pursued the issue and I'm happy to say that the Legislature did turn that train around and we, we, as a State Finance Committee have issued, approximately, a little less than half of the necessary bonds to complete the Tacoma Narrows Bridge Project. The estimated savings at the time of the legislation was approximately \$400 million in savings by doing a publicly financed facility. At the present rate of our issues, we will dramatically exceed that savings threshold, so significantly less expensive. Ah, I would like to enter into the record a letter from the Speaker of the House jointly signed by Hans Dunshee who is the Chairman of the House Capital Budget Committee, it is directed to the State Finance Committee to all members.

Dear Gentlemen, We are writing today in support of public financing, i.e., Certificates of Participation (COPs) for the Tumwater Office Building Project. We spoke with Treasurer Murphy this week, and we are convinced that public financing is the best deal for taxpayers. We realize that many factors have come to bear on General Administration's decision to pursue a private financing for the Tumwater Project and the language of the capital budget was designed to allow GA to explore options. However, it would appear that the 63-20 financing is not in the best interest of the citizens of the state. We have yet to see a 63-20 option pencil out as economical alternatives to COPs. The Montague DeRose & Associates estimates the savings of COPs would range from \$13 to \$21 million for the state. Our state has a proven track record of solid public financings with excellent rates on projects ranging from the Seattle football stadium to the Legislative Building renovation. We believe the Tumwater Office Building Project would benefit from the same public financing philosophy. We are certainly available if you want to talk about this further. We appreciate your consideration of my thoughts on this subject. Sincerely Hans Dunshee, State Representative 44th District, Frank Chopp, Speaker of the House, 43rd District.

Chairman Murphy continued: We have, at the request of General Administration, undertaken a review of the documents that have been provided to us. Those documents were provided to us about two weeks ago. We have endeavored to do a thorough analysis of this project. Quite frankly, ah, we didn't have the luxury of the amount of time that others have had in dealing with project, but in your packets is information that relates to this project. I would like to call on

Montague DeRose & Associates to speak to this and Mr. Jim Bemis, ah, will speak to his memorandum which you will find, ah, in your packet dated October 3. Mr. Bemis.

Jim Bemis said: Thank you Mr. Treasurer. It's our privilege today to present our analysis of the Tumwater Office Building. Um, as the Treasurer mentioned, the memo is dated October 3rd. I'll be referring to that memo in my presentation. Before I begin, I would like to do, ah, a, mention that in preparing we consulted with the financial advisor for the state COP programs, Susan Musselman, and also with ah, the issuer's counsel, Foster Pepper & Shefelman for ah, certain items ah, pertaining to the report. However the recommendation is our own, we will take responsibility for that. The, ah, in undertaking this analysis we looked carefully at both the existing COP program for the state as well as the 63-20 financing proposal provided by, ah, General Administration. Um, just by way of background might be worth taking a minute to review some of the characteristics of each type of financing. I'll do this ah, very briefly. Ah, with the state's Certificate of Participation ah, program, ah, public agency would own or acquire property and then execute a site lease with a non-profit corporation. And that non-profit corporation would lease the facility back to the public agency. Ah, in this manner, the ah, ownership of the property, the management of the construction process, and control of the financing all stays within, um, public agency control. There are a, a number of specific strengths that are listed in the state's COP program, but there's two I'd like to bring to your attention. Ah, first is the use of standardized lease documents, um, which ensure consistency and reduce legal costs, taking much of the, ah, any sort of surprises, ah, out of the process. Surprises tend to be, ah, rather expensive. Um, and ah, so standardized lease documents, we believe is a very, ah, strong, ah, factor in favor of COP financing. The second item I would like to bring to your attention is the oversight and administration by the Office of the State Treasurer, um, brings with it a number of specific benefits. Um, all of which are, ah, weighed in the, ah, credit evaluation done by rating agencies, bond investors in the financial markets. In terms of the 63-20, ah, proposal provided by General Administration, um, typically the financing structure involves a, ah, non-profit corporation, ah, ah, which is the, ah, serves the public interest. However, ah, the, um, ownership and control of the property and control of the financing are usually, ah, ah, controlled by the private sector. And in that sense, ah, some of the public control, ah, is given up. Um, we found that in going through the GA proposal, there were a number of higher costs and fees, um, that were imbedded in their structure. First of all, higher costs of issuance of, ah, over \$275,000, a debt service reserve fund surety premium, um, the state COP program does not require debt service reserve funds. Um, there were, ah, ah, because of the, ah, credit differential, we believe that any bond insurance premium, ah, would be higher. Um, there's also, ah, two annual on-going costs that we identified. One is a National Development Corporation annual fee which will begin at \$44,000 and increase at 2.7% annually. And the second is an annual rental fee of 1% of monthly rent. Um, one of, because each 63-20 financing differs, ah, from case to case, there can be a wide variety of, ah, credit ratings assigned to 63-20 financings. Conversely on the state COP, as a AA2 rating, very high rating, ah, from Moody's. Um, this 63-20 financing rating agencies have to look very carefully at the structure, ah, to, ah, um, develop a rating and so that rating can vary from issue to issue. Um, the other thing I wanted to point out, as I mentioned before, um, the state control, ah, may not be present in the financing process, particularly the State Finance, ah, Committee would not control the financing process here, so the ability to oversee the quality, and cost of services provided to the state would be lacking. Um, while the COPs and 63-20 financing share, um, similarities in terms of, ah, the ability to

construct lease terms security, the non-appropriation risk and the ownership after lease are identical, ah, for the COPs and the 63-20. Um, there are several factors that I would want to highlight which are differences between the two. Ah, first of all, ah, the ownership and control, ah, in a 63-20, as I mentioned project ownership and control is held by a private entity, um, and therefore the public oversight and consistency is diminished. Under the state COP program, on the other hand, the public agency owns the project, manages the procurement and construction and ensures compliance with state procurement statutes and agency specifications for construction. Ah, the credit, ah, as I mentioned before, for the state COP has a very strong Aa2 rating from Moody's. Ah, things that the rating agency looks at in developing this sort of rating is the general credit worthiness of the leasee, essentiality of the leased properties and security features in the lease agreements. Um, those are all standardized and very strong, ah, with the strong market reception in COP program. On the other hand, ah, for the, the proposed 63-20 financing, um, ah, those have yet to be developed. Um, I believe that, um, ah, Foster Pepper will be making a presentation after mine which will address some of those items, ah, specifically. Ah, however, typically private ownership is viewed as a weaker credit than public ownership by rating agencies because of the, ah, inherent risk of bankruptcy and, ah, other types of corporate risk that are inherent in private ownerships. Um, the third area that I want to turn your attention to is, ah, the financing costs, um, which we believe are significantly higher in the 63-20 structure. Um, to evidence this we, ah, provided comparisons for two COP financing structures, ah, and compared those to the financial information that was provided to us, ah, by General Administration in their, ah, September 22 memo. To, to develop the comparison, we took the financial information provided by GA as given, ah, we used, um, the, ah, same underwriters discount, same project fund to interest income and same maturity to develop our analysis. Ah, the only thing we varied was the market rate of, ah, interest and the cost of issuance. For the cost of issuance we relied on (pause to change tapes)

Chairman Murphy said: Go ahead.

Jim Bemis said: All set? Ah, we provided two cost comparisons with, ah, different scenarios for COPs comparing it to the proposed 63-20 financing. In the first scenario, Scenario A, ah, we took what we believed was an average interest rate for COPs based on the current market. Ah, under that scenario, we found, ah, gross savings of about \$19 million and net present value savings of about \$8.2 million. Ah, the second scenario we, we ran was simply to reduce the interest rate assumption in the 63-20 proposal by three-tenths of 1%, which was, ah, the indication by GA of the interest rate differential between the two, ah, bond issues. Ah, using that assumption, ah, that would be our COP Scenario B, ah, we came up with gross savings of \$12.6 million and net present value savings of about \$5.2 million. Ah, one assumption we should bring to your attention is that in, ah, looking at the ah, what was proposed to be financed, we broke the COPs into essentially two COPs. One which would finance the real estate portion of the project and the second would finance the furnishings, ah, of \$5 million. And, in our, ah, estimation, the best way to do that is to finance those furnishings, ah, when they're needed, which our indication would be in 2006. So in our, embedded in our COP, ah, ah, analysis is really two COP issues, one which would be done, ah, as quickly as the Committee wishes. The other would be, ah, financing, ah, furnishings at the time its needed, that way you eliminate the negative arbitrage and cost of carry. Um, so, ah, in summary, ah, comparing the two, we found

gross savings of, ah, between \$12.6 and \$19.3 million, depending on your assumptions on the COP.

Chairman Murphy said: Jim, are you using a different one? Mine has, ah, \$13 to \$21 million on my copy. Is that, do we have a different version going here?

Jim Bemis said: Um, let's see here. Okay. I got my copy from Darlene so I'm (laughter). Um, so the cost of these, the range of savings we, ah, we saw or estimated for the COP between, ah, \$13 and \$21 million, {Chairman Murphy says Okay} the net present value, ah, savings between \$5.3 and \$8.9 million. Ah, so based on this analysis,

Chairman Murphy said: So this is using the same life?

Jim Bemis said: Yes.

Chairman Murphy said: The same project?

Jim Bemis said: Correct.

Chairman Murphy said: The same cost of construction? The same cost of land acquisition?

Jim Bemis said: Yes.

Chairman Murphy said: And then folding that into how we would do a financing for that project?

Jim Bemis said: Correct. So we took those items as given from 63-20, and we put in the cost of issuance that would be attributable to the COP program as opposed to what they had, and, ah, market rates which is rates of interest. Um, in one case and the other case a 30 basis point, ah, reduction in interest rates and ran net present value savings based on that. So, essentially it would, it would fund the same, ah, project but just do it in a different manner. So based on this financial analysis, we conclude that the COP, ah, structure is beneficial, more beneficial financially for the state and we would recommend that COP financing would be used for both the project office building and then subsequently for \$5 million in furnishings, ah, that the second would be separately at the time that it's needed. Um, so we believe that this conforms to the prime [objective] that the state utilize the most economic financing method available. That concludes my report and I'd be available for any questions should the committee wish.

Governor Locke said: I have one question. Um, with the interest rates for COP, ah, are you assuming that these would be in effect a year from now?

Jim Bemis said: No, they, these would be current market, ah, rates.

Governor Locke said: And a year from now?

Jim Bemis said: There's no way of knowing.

Governor Locke said: But interest rates are generally going upward aren't they?

Jim Bemis said: Ah, interest are generally, they, they've increased over the past few months. But I think the ah, as Darlene indicates, ah, the indication from the markets are that it's stabilizing.

Chairman Murphy said: Governor, for your information, here's a snapshot of the weekly Bond Buyer Index. This was done in August. This was done last week. So,

Jim Bemis said: One thing I would want ...

Chairman Murphy said: We're still, we're seeing a trend in downward apparently. So, is your question related to the furnishings questions?

Governor Locke said: Nope. I just know that, ah, a lot of interest rates, while they're going down a little bit, are still higher from where they were about a year ago. Or six months ago.

Darlene DeRose (Montague DeRose & Associates) said: Treasurer Murphy, actually it's an interesting, none of us I think in the room or at the table would want to be market prognosticators, say where things might be. I think the low point recently was in June. However, um, we've had a number of clients who actually rushed transactions to market who had found if they'd done it in the current market, the rates would have been better. So there, there's no way of knowing, but rates could conceivably be lower a year from now.

Governor Locke and Chairman Murphy said: Or higher.

Darlene DeRose said: It could be either way. Exactly.

Governor Locke said: Correct.

Darlene DeRose said: There's no way of knowing. So one can only assume based on current information, as we would presume the GA proposal did that using current information if one goes up the other would go up concurrently.

Jim Bemis said: And we did, in our Scenario B, we, ah, showed a 30 basis point, ah, difference between the two, so that sort of gets at the, if rates go up they would go up on, on either issue.

Governor Locke said: And you base this on... Chairman Murphy simultaneously said: The direction, just one second. The direction we gave to our consultant was to, was based on the assumption that if the Committee acted to direct this project to be COP financed, that we could likely complete the cash financing, cash in the pocket, in the Treasury, within six weeks. So the presumption of using current interest rates for the analysis, we found to be appropriate. Um, as I

indicated earlier in the bridge project, they said well, you just can't do that. And I'm going, well, let's put our best minds to something and figure out how to do that. Ah, there is an indication that there is some legal constructs that make it difficult to change horses at this point. 'Kay. Um, there's a, some numbers I looked at the other day. State is into this deal for \$4 million today. That's how much we're into it for the dirt. If the Port wants it back and we don't do anything, they write us a check for \$4 million plus some accrued interest in there. And, we look for another piece of dirt. Okay, that's the scenario. Okay. But we're gonna, we're gonna spend another \$1.7 million to get into the project. If you look at the savings differential between the COP and the 63-20, the dirt is free, because the savings level difference between the two types of financing totally covers the cost of the acquisition of the land.

Lt. Governor Owen said: That's assuming that there's an agreement on your numbers. Ah, I have a question. When you, ah, re-evaluated this whole, whole thing, did you do it based on the new or permanent process that we would have to go through which means, I think, that's a year down the road before, nine months down the road, what the new construction costs would be and all that? Or did you base it on what their bid was last June? A year ago?

Jim Bemis said: We took the numbers that were provided by GA as given. So we used the same financing costs.

Lt. Governor Owen said: So you haven't done it on the new bid?

Jim Bemis said: No.

Lt. Governor Owen said: Because I mean you don't know what that would be and neither do we. I just.

Jim Bemis said: Right.

Lt. Governor Owen said: But that is, is what you would have to base it on.

Darlene DeRose said: It's really a financing method analysis. Lt. Governor Owen said simultaneously: Right. Based on the bid from a year ago not the bid from nine months ago.

Darlene DeRose said: That is correct. Lt. Governor said: 'Kay.

Chairman Murphy said: What we've attempted to do is identify what issues are land acquisition, building construction, furnishing costs and then identify and separate and bifurcate that if you will, from the financing contracts. So the example we've used in conversation is 'well, Governor, if you wanted to build a house over on this block over here and you owned the dirt', just like we do here, and you said 'well, I want to build a building here' and some other guy says 'well, you know you only can lease it from him.' And you say 'wait a minute, I own the dirt, why can't I build my own building and go to my own bank and get my own financing, rather than using the guy down the street's financier and pay him rent?' At the end, the economic substance of this transaction is at the end of the 25 years, no matter which financing technique we use, the state of Washington owns a building. Federal law under 63-20 requires

that and under COP, the lease-lease back is built in. So, at the end of the day, we're gonna own dirt and a building and our decision is a fairly straight forward one. Which costs the least? Because at the end of the day, at the end of the 25 years, we're going to own that building, lock stock and barrel. So, the decision package before us is how do we determine, as directed by the Legislature, to provide the most economic means of acquisition of this building and land, at the end of the day, at the end of the 25 years. That is the charge that we took upon ourselves in providing the analysis, and, and, ah, quite frankly, ah, we are in the business, as you know, of doing financings and providing support to the State Finance Committee. I think we've done an admirable and focused and solid job over the years and, and so, our perspective is one that says 'you got two sets of numbers, which ones do you want to use?'

Lt. Governor said: But it's not basically that simple because you're taking and comparing to what ah, would, would have happened if you had both started this process at the same time. And regardless of your example, you still have to take what is reality. And reality is you start all over again. And, and that is a factor, regardless of how you want to compare it, you have to take into consideration in this whole process. So what we should do, is continue on and listen to the rest of the discussion... Chairman Murphy said: Oh yeah. Lt. Governor said: about the comparison so that we can get through this thing.

Chairman Murphy said: Right. Right. Ah, we have next scheduled a discussion from the legal end. Mr. Spitzer from Foster Pepper Shefelman, we've asked him to review the documents. Now, in the normal situation, when we're normally doing the COP, we get a direction from the Legislature and they give us a not-to-exceed dollar amount. This particular instance is far different than that, in that they have given us a square footage number, not a dollar amount, and that is why we started off by having Office of Financial Management saying this would then generate comparabilites as directed by the Legislature. The second component of that tells us to do it in economic fashion. Because the proposal that is before us has imbedded in it a financing contract and a tenant agreement that is part and parcel of that, we are, I have directed counsel to review that. Because they are so intertwined, that one can not differentiate one from the next. As a result, we are ending up doing more work than we normally do on one of these deals. If an agency comes to us and wants to do a COP financing, and they have authority from the Legislature to do that and they have a dollar amount and all their paperwork is in order, we issue the debt. In this particular instance, ah, on advice of counsel, we have determined that because the contract entered into is so intertwined with the 63-20 financing that we, we need then review that to determine the economic benefit to the state. And to ensure that we have done our job in completing the work the Legislature has authorized. So at that introduction, ah, Mr. Spitzer.

Mr. Fukai said: Mr. Chairman. Chairman Murphy said: One moment please.

Hugh Spitzer said: Ah, I'm Hugh Spitzer with Foster Pepper & Shefelman. Mr. Chairman, Members of the Committee, ah, I worked on this with Tom Morrill of the Attorney General's Office and we did something quite different from what ah, Mr. Bemis was doing. We were looking at, not at a comparison, but basically we took it, took a look at the draft of the documents, the lease agreement and the ground lease that came to us to, ah, see what kind of issues we could spot and so that, ah, ah, what things the Committee should take into account in

making a decision. And if you go with the 63-20 approach, um, there are some decisions, some of them policy and the legal issues are things that can pretty well be worked out. But, the lease agreement is, from the state's standpoint, really the core document, because as, ah, others have said before, the state signs this lease agreement with the landlord which is this private non-profit. And it, in turn, has the, makes the agreement with the developer and so what is in that lease agreement, and the ground lease to a much lesser extent, really drives all the protections that the State can have or needs from a legal standpoint. So that all the guarantees that you want to get need to be in there and so, it, just as a general matter, it seemed to me that the lease agreement that you approve, if you go with this approach, really needs to be in substantially final form. Because you won't see it again unless you choose to see it again, which you can do. Um, and I'll just review four or five kinds of basic issues and a couple of others. I have about a dozen issues, but most of those are technical things that could get worked out, ah, by a project and financing team. But, ah, number one, the, the, ah, state financing contract requires, ah, some type of up-side, ah, cost. It says the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established by the State Finance Committee. And the draft resolution that I saw has a cap on the bonds, but it's important that the lease agreement itself have some type of aggregate principal amount allocable to the monthly rent payments. So that if you, ah, it, it may not be enough to just approve a maximum bond amount, but you would want to have a maximum lease payment amount in order to square with the state law. And then you, you have some type of up-side cap in what you have to pay in the leasing. Um, another issue, and this is kind of a business issue, ah, but it, it popped out of the lease. The lease agreement does not include an, an outside commencement date. The commencement date is the date that the state moves in. And that's when the state is on the hook to pay monthly rent. You don't have to pay rent until you move in. There are a number of mechanisms that I am certain would be built into a 63-20 transaction to, to, pressure's on the landlord, the developer, to complete the project on time. Mainly the state doesn't have to pay rent until it's completed. And so that leaves the developer on the hook, or his or his insurance. The um, the problem is that so far as I can tell from the lease agreement, it doesn't have anything to cover the state's costs, GA's costs if there is a late completion. So if there is a six month delay, GA is still renting from itself or renting from other landlords and the documents don't seem to cover that. And that's just something that you might want to take a look at and make sure that OFM and GA have thought through. And they may have, but I could not tell. Another business type point is there doesn't seem to be in the lease agreement controls on operating costs. Basically the developer picks a, an operator and the state agrees to pay the bills. Now if GA were running this building itself, if there was, there was not enough state money, the Legislature could appropriate less and then GA would spend less. Under this agreement, the, the state has agreed to pay the bills of a private sector operator that the developer, the private nonprofit picks. The state can, through a process, at least the way I saw the documents, eventually fire that operator and maybe cause the operating costs to go down. But it isn't as clear as it might be. And you may want to consider whether GA should, should have the explicit ability to take over management of the building, ah, if it needs to reduce operating costs. Right now, it is, it is, at least on a medium term basis, a blank check. Debt capacity, in my view, needs some greater protection. That is something that can be solved but, ah, ah, and I want to make a correction in my memo by the way. I said in the memo, that I didn't see a non-appropriation provision in the lease and Cynthia Weed pointed one out to me and there is one in Section 35. I think that the lease agreement could include the, ah, the current language that's used in the COP Program.

Things about this not being a moral obligation of the state and make it much more clearer that the state can, can walk away through non-appropriation. Um, in one of my suggestions, is that, is that this Committee should receive an opinion from bond counsel working on the 63-20, but address this Committee to the effect that the state's obligations of the, ah, ah, under the lease agreement, don't constitute debt so that you have that assurance. Ah, and you can only get that through the lease agreement, 'cause the lease agreement is the key document. And, and the last kind of bigger picture thing is, is whether this Committee wants to or needs to see any more documents. Ah, basically, if you just rely on the lease agreement, then what happens after that is sort of a black box. Ah, at least to this Committee. You've got the lease agreement and then it is the non-profit that proceeds from there. Um, do you want to review the official statement? Ah, although it is the, an official for the, the non-profit, ah, and not for the state, the non-profit is 'on-behalf of issuer'. If something happened, an unlikely event, but if something bad happened down the line, the ah, the IRS, the SEC, bond owners, would come back after the state whether or not on paper the state is obligated. So do you either want to have certain requirements in the lease agreement, that certain jiggles show up in the OS, or do you want to look at that Official Statement? Do you want to look at the indenture just to make sure that it's consistent with, with what you, ah, ah, what you are planning to have here. So, I think you want to take, you want to discuss and make a decision on whether you want to look at any other documents past the lease agreement. Um, there are several other things, and I'll only mention a couple, the rest of these things can obviously can be looked at by staff. One key thing is, at least the agreement that I saw, doesn't have an expiration date. There's a blank, and I think it needs to be filled in before this Committee approves the lease because under the financing contract statute the expiration date has to be fixed no more than 30 years after the effective date of the lease. And you need to at least see that. The other interesting thing is there is something called a tenant's contingency of a million dollars. That's for GA, for changes in the project, increased costs and so on, to the extent that GA does not request adjustments in the project that require payments from the tenant contingency, the remaining amount, amounts are disbursed back to the tenant. The tenant is GA acting, the state acting through GA. And you want to make sure that OFM and GA have thought through if there's \$500,000 left over, what happens to that? Does that go into a lease payment fund to take care of debt service? Does it go in, can it go into other GA projects or not? Does it have to be appropriate for something or not? I just think that that needs to be thought through. Ah, and, ah, I'll, that's all I'll say right now. Obviously staff can take a look....

Governor Locke said: So that, the tenant's contingency issue that you've raised, is if there's money owed back to GA,

Hugh Spitzer said: Right.

Governor Locke said: How does GA want to spend that?

Hugh Spitzer said: Right.

Governor Locke said: Does it go back to the agencies?

Hugh Spitzer said: What happens?

Governor Locke said: Does it go into the General Fund?

Hugh Spitzer said: Yes. And can it be used, I'm not sure under the Appropriation, not right, excuse me, under the Budget Bill that it can be used for anything but this building. So then does it go into a lease, what you would think of as a debt service?

Governor Locke said: But, if there's a lot of money left over, the Legislature could decide how to do that at that point. If it's a nominal amount,

Hugh Spitzer said: Well, it's their proceeds of the 63-20 bonds. They must be used for capital purposes only. The 63-20 is established to do this building so I guess it can be used for only this building and maybe I'm answering my own question, maybe it has to go to pay, pre-pay monthly rent. But has this been thought through? You can't tell from the lease agreement. It just says it goes back to GA. And again, from this Committee's standpoint...

Governor Locke said: But, as long as GA uses that money only for this building, whether it's to pay the rent...

Hugh Spitzer said: That should, I think that that would work.

Governor Locke said: All right.

Hugh Spitzer said: But again, I've raised these because I don't know whether they have been thought through and I've got another dozen questions. And the key thing is between now and when this Committee acts, you, it might make sense for people to review these, think about it, come to decisions. Ah, for this Committee, I think the key decisions are ah, besides is this the way you want go, um, whether you want to see beyond the black box? When the University of Washington has done these in the past, they've had three financial types, independent financial advisor of their own working on this thing. Um, and they're all over the documents and will that be done here? Who's going to do it? Who would be the financial advisor for the, for GA and the state? Ah, you know, we can't tell.

Chairman Murphy said: Mr. Fukai, you had a comment.

Rob Fukai said: Ah, yes, first I'd like to ask our counsel to address the legal issues that Mr. Spitzer raised so that we can clarify that and then, beyond that, I would like to have the opportunity to address the economic analysis that was done by the DeRose firm. We have had a chance overnight to analyze it and have some, ah, issues. So, those are the two things that if we could begin with Cynthia Weed and Margie Smitch. If there's any response that you'd like to make. My, my gut reaction is that many of these issues can be ironed out between the time that there is an approval and the time that the 63-20 would actually go to finance. But I would ask them for any specific comments they would have.

Jay Reich [Preston Gates & Ellis] said: My name is Jay Reich and I'm just going to precede Cynthia just for a moment to talk generically what I, to put something in context. Ah, Hugh's points, of course, you know, are important points. If it goes to finalizing the lease, I

would suggest to you that fundamentally, ah the Finance Committee has to make the fundamental decision whether it's going to negotiate the final lease or delegate to GA, _____? represent the state of Washington to finalize these terms. I would also suggest that even in a COP context, all the terms and conditions of a COP contract are not finalized at the time that the Finance Committee gives general approval for receiving the COP. There are going to be a lot of details as Hugh mentioned some of them, which undoubtedly will be developed. And I think it's totally unfair to suggest that the lease have a termination point when until this moment, we don't even know whether there will be one, when we could proceed with it. So a lot of those questions, while relevant, will be determined before the lease is signed and I think it's appropriate to ask the question whether GA can adequately protect the state. I might also indicate and I think the Treasurer raised the question before that, that if you're asking the private sector to proceed, it's very difficult to ask them to negotiate with multiple parties. First the GA, then the Finance Committee and back again with GA, and after the price is re-negotiated once again, that if we are really to have a business climate in the state of Washington, which we encourage private sector to come forth and try to save costs for the state, assuming that we're going to get the financing today to realize that. Then I think we have to make decisions, the state has to make decisions, the public decision makers, how those decisions are made, where they get made and can they be made in a timely manner. Cynthia, you want to talk about some of the issues?

Cynthia Weed said: Mr. Chair, Members of the Committee, my name is Cynthia Weed and I'm with Preston Gates & Ellis acting as Special Counsel to GA in connection with this project. As far as the specific lease rate is concerned, that definitely was part of the bid. Ah, the lease rate, ah, has been ah, negotiated and that capped rate has been ah, held, so we know what the lease rate is. The only, ah, variation that we have yet to complete is the overall cost of the financing and GA will, ah, address some of those issues. We actually have a spot in the resolution for the total cost of the project and that has been ah, clearly the topic of considerable discussion and ah, negotiations. That's a dollar amount that, ah, ah, in some cases the tenant wish you could increase, but, ah, in order to get the lease rate, ah, that they have bid, we have to stay with that cap. So, there really isn't any room to move in order to not increase that lease rate. As far as the outside commencement date, ah, I think when we started this, there was an outside commencement date of August of, ah, 2003, but it has moved in conjunction with just waiting, frankly for this lease. Ah, there will be a commencement date as soon, believe me, as soon as possible, if this lease is approved. Ah, as far as the debt issue, ah, there has been a meeting um, attended, um and led by the Attorney General's Office and we have an oral opinion from the Attorney General's, ah, Office as well, that it does not believe, ah, that it would overturn the Department of Ecology decision and find this lease to be debt. We concur in that view, ah, that this lease would not be a debt of the State of Washington.

Hugh Spitzer said: I'd like to say a couple of things. Ah, I guess on the last point, on the debt, I think that the..

Chairman Murphy said: You were an attendant to that meeting?

Hugh Spitzer said: Yeah, I was and the consensus was that a 63-20 transaction can be structured in such a way that it will not create debt. The key is whether the specific documents

objectively do it. And, and that leads to the other issue whether, ah, as Jay Reich pointed out, ah, there can and would be, if the Committee approves this approach, a lot of work between Committee approval and the time that the bonds are issued. Ah, this Committee under the financing contract statute approves, must approve a financing contract. Typically you would be approving a financing contract substantially in the form of the attached. The lease, the draft of the resolution, proposed resolution that I saw doesn't say substantial in the form of. It just says approves the lease agreement which basically again leaves all that stuff out there. If you go with this approach, I guess, I would strongly urge you to make sure that the final document comes back so that what you approve is what you know you were going to get. Even if you make the policy in business judgment, this is the way to go, get those documents back in front of you and approve it so that what you approve is the financing contract. Then you know that you have complied with that statute.

Chairman Murphy said: Mr. Fukai, you have further comments?

Rob Fukai said: Is there any additional information on the legal questions? Okay. It's not what I'm asking. What ...

Bob Campbell said: I'm Bob Campbell with Lehman Brothers in Seattle, we're the investment bankers for Wright Runstad. And it seems to me what we're really looking at here is would a 63-20 financing structure be more or less expensive than a state COP financing. And, I don't think anybody knows. If the Legislature said try this, try this private sector participation, and let's see, ah, there are those who believe that this is a more efficient way of financing projects. Um, we had a chance to look at the Montague DeRose evaluation and as in all things in life, reasonable minds can differ. And, ah, the driver it seemed to us in their analysis of the cost of ah, 63-20 was the interest rate expense. You were assuming that 30 basis points differential and we said to ourselves, well, you know, it's the same credit, same appropriation credit as the COP, shouldn't it be the same? So we thought, well, no, it should be equal, and ah, what we did is we tried as best as we could to do an empirical analysis and we compared a King County 63-20 financing, ah, that we did. Ah, good credit, same kind of office building with this project. And we measured the interest rates against the high-grade scale that we use to compare all things. And we looked at a couple of state COP issues against that same high-grade scale. They were done at different times, so you can't compare interest rates. And we saw that, um, yeah, there was a little penalty for doing a 63-20. As best we could tell, it was in the range of 4 basis points or below, in other words not important, to as many as ah, 10 or 11 basis points in the short term, so there was a difference but it certainly wasn't 30 basis points. We said to ourselves, well, would that apply to the 63-20 financing, and we thought, well, maybe it would, maybe it wouldn't. Because we have opportunities in the structure of financing that we could take advantage of that the state doesn't in its COP financing, and maybe make that differential go away. So in terms of speculating over the interest cost of the 63-20 versus the state's COPs, it's just conjecture. We believe that we can keep the financing costs right at the state COPs. Ah, the Montague DeRose analysis says we're only 30 basis points, so, ah,

Chairman Murphy said: Mr. Campbell, are you the financial advisor to the General Administration?

Bob Campbell said: No. We are the investment banker for Wright Runstad, as I mentioned.

Chairman Murphy said: Okay, so did you assist GA in preparing their analysis in any way?

Bob Campbell said: We did not. We looked at, ah, we got the Montague and DeRose analysis yesterday, I believe, and ah, and evaluated it versus ah, what's being proposed. Ah, yeah, we also...

Chairman Murphy said: 'Cause there was an interest rate assumption built into the documents that we got from General Administration. I'm just trying to figure out who made those recommendations.

Bob Campbell said: Mr. Treasurer, I don't know where that came from and I don't know whether Montague and DeRose independently, ah, verified whether that was an appropriate assumption or not.

Chairman Murphy said: Mr. Fukai could you answer that question.

Rob Fukai said: Yes I can. The information they used from the GA was taken out of our JLARC model review, which was the document that we submit to OFM to make sure that the hurdle rate is met in terms of the legislative proviso and that's the overall cost of the project. As I mentioned earlier showed a net benefit to the state of \$6.6 million, compared to ah, recent rentals. Um, so they, that's where I think if you look at the, um, DeRose analysis, what we have is a situation of not comparing apples to apples. And certainly if there's a \$13 to \$21 million net present value difference, that gets everybody's attention, my god, how could the gross be so much and I think that's what Mr. Campbell is suggesting. Well, we, we did a review, ah, yesterday and last night of the study and have come up with a couple things that we believe makes it apples to apples, at least more apples to apples, in recognizing the fact that we haven't had enough time to comprehensively review ...

Chairman Murphy said: First of all, before you go on with that, I, I, I will appreciate the line where you're going, ah, but I just want to make sure for the record, what we're talking about here. You sent a proposal to the State Finance Committee to consider. In that document you identified all sorts of costs, ah, rental levels, ah, pile this thick, in that document, you identified an interest rate. Is that not an interest rate that you thought was a reasonable one?

Rob Fukai said: That was an assumption that we made in preparing the test for the JLARC model guess. And we attempted to make that the most conservative assumption that we could possibly make, so we wouldn't, ah, inadvertently benefit, benefit the project in some way.

Governor Locke said: So, in other words you're erring on the high side

Rob Fukai said: Right.

Governor Locke said: ... in order to try to make sure that you're been, that the, that you're indeed meeting the requirements?

Rob Fukai said: Correct.

Governor Locke said: But not necessarily assuming that it will be at that high side in terms of interest rates. But if it were that high, you'd still meet the legislative requirements that this a cost efficient and ah, economic proposal?

Rob Fukai said: Yes.

Chairman Murphy said: Well, Governor, that's exactly where I was headed and it's how do we meet the economic test if the numbers they're providing us are theoretical?

Governor Locke said: And they're assuming on the high side in order to make sure that they're not accused of underestimating the cost and over-stating the benefits.

Lt. Governor Owen said: Everybody's numbers are theoretical. What are you talking about? Chuckle. Well they are, everybody's are theoretical.

Governor Locke said: [three voices trying to talk over each other] Let, let, let me say this, let me ...

Chairman Murphy said: We put numbers to local governments virtually every week and they're attempting to make decisions about a financing of either a school bus, a fire truck, a school house or a fire station, and those entities rely on us to give them real world, real numbers, so they can make real decisions. So, what I am suggesting is in this analysis here, we've been provided some information by GA for us to make a decision. And now, unless I'm paraphrasing wrong, Mr. Fukai, you're now saying that well those were just, you picked a number. Am I misquoting you?

Rob Fukai said: No, those are, those are estimates of what we thought a conservative interest rate would be for purposes of testing the economic liability of the project.

Lt. Governor Owen said: Based on the JLARC model.

Rob Fukai said: Based on the JLARC model, yes.

Chairman Murphy said: So then in our analysis, that we are charged by the Legislature to conduct, an economic analysis of this, we are attempting to do an apples to apples comparison. I, I, my instructions to, to consultants was to say, okay, let's for the sake of argument presume that in their documents they said that there was a 30 basis point spread. That number was attributed to us. That number, just for the record, is not provided by GA, by us at any time, period. We have never, until the recent Montague DeRose piece, identified a number. There's a reason for that. If there is a delay, I'm stuck with a number I can't live up to. And as the state's banker, it's incumbent on me to make certain when I throw a number out, it's something I can

deliver. Now, when we worked with the Legislature on the bridge project, when we worked with the Governor and others on the stadium project, we were attempting to provide you good counsel. We are doing that the same this time. And so, there are inherent costs that we would not have to deal with, if this project was a COP finance. Period. Those costs disappear.

Governor Locke said. I understand that. And that's what, ah, Lehman Brothers indicated that there appears to be a slight penalty for going the COP route, ah, but I think that ah, you know, all this discussion ...

Lt. Governor Owen said: Go the other.

Chairman Murphy said: The penalty the other way.

Lt. Governor Owen said: Go to 63-20.

Chairman Murphy said: The penalty goes to 63-20.

Governor Locke said. Excuse me, a penalty for going the 63-20 route and the question is how much is that penalty? And, and, ah, your consultant has indicated the difference, ah, may be assuming a 30 basis point could be any where from net present value, about \$5 million to \$8.5 million dollars. That's fair. But that also assumes that, ah, using information that GA provided to be very safe and, ah, and that may have over estimated the cost to be safe. I mean, just like the monorail deal, I mean they underestimated the revenues coming in and then suddenly the taxpayers are stuck saying how are we going to pay for it because the monies not coming in and you don't want to be overly estimating income or underestimating costs on a project. So everybody in government these days is trying to say worse case scenario or typical scenario, what might it cost in order to meet the threshold and the safeguards. Ah, because if you err on the low side, obviously you're going to meet your projections and everything is going to come out hunky-dory and you say let's go ahead with it. Even on the re-financing of debt that we had this morning, you guys have, and we have established a certain threshold, a maximum level of savings before we want to entertain re-financing of debt. And that's the same approach that everyone is using. Maybe we need to hone in on the actual, actual cost, but we don't have that ability right now. Ah, so I understand your concerns about this and, ah, I just think that, ah, we've heard it, there'll be a difference of opinion. Ah, and I, I, I move that we move into Executive Session on this State Finance Committee to actually decide once and for all this policy of going forward and let the, and let's have our debate right there in Executive Session and decide this, ah once and for all. I think, ah, Hugh's, ah, comments on additional protections that should be in the final lease are very good points and, ah, I have no problem having the final document come back to us to make sure those points have been addressed directing the Assistant Attorney Generals representing GA or Special Counsel and even, ah, counsel for the State Finance Committee to make sure those protections are in there. Um, but I'm ready to ...

Lt. Governor Owen said: I would second the motion.

Governor Locke said: I'm ready to move into Executive Session on this and, ah, just ...

Chairman Murphy said: To make clarity to the motion, ah, do you mean an Executive Session where we clear the room and there's just the three of us?

Governor Locke said: No.

Lt. Governor Owen said: No.

Governor Locke said: Move into, from a non, from a Work Session into session where we, ah, ah, take a vote.

Chairman Murphy said: Okay.

Governor Locke said: I have a motion to propose, a resolution to propose. I believe GA has provided to everyone and I think we ought to go back into ah, into voting session to, ah, deliberate.

Chairman Murphy said: Um, I'm unable to recognize that motion. The notice to the media under the meetings law was identified as a Work Session. There's no action intended. I'd be happy to work your staff and the Lt. Governor's staff to properly schedule a meeting to entertain an action on a resolution that does require under the open meetings law a 24-hour notice to the media and to interested parties to allow proper participation. And, and, I, unfortunately I, I'm going to rule your motion out of order.

Governor Locke said: Excuse me, but, Mr. Chair, under the, ah, meeting notice for the State Finance Committee, it said 'and other business which may come before the Committee and the Commission'. So I'm moving that we bring this before the Committee.

Chairman Murphy said: Ah, Mr. Counsel.

Tom Morrill said: Which notice are you talking about, Governor?

Governor Locke said: Meeting Notice, State Finance Committee which has the

Tom Morrill said: Which is the ten o'clock?

Governor Locke said: Excuse me, the ten o'clock. And other business which may come before the Committee.

Tom Morrill said: And we've adjourned the ten o'clock session.

Governor Locke and Lt Governor Owen said: No.

Lt. Governor Owen said: No, no, no, no, no, no, (same time the Governor was saying:)

Governor Locke said: No, I asked that we not adjourn and he said no, we're just moving into another meeting.

Lt. Governor Owen said: And it will be in, on the table. It will be re-opened, is exactly what he said.

Governor Locke said: 'Cause I said, I don't want to adjourn and you said we're coming back to that.

Lt. Governor Owen said: He said it will be re-opened and those are his words on tape. And we are re-opened.

Chairman Murphy said: Ah, my recollection is unclear as to what I said earlier. Ah, we can have a review of the tape. I want, I am attempting to be fair in this, this deal, ah.

Lt. Governor Owen said: Well, Mr. Chair, that, that, is, we asked that this issue be placed on here. Both of us did and, and, being fair would have placed it on here. And so, we have made a motion ...

Chairman Murphy said: I'm being fair. Fair would have ...

Lt. Governor Owen said: We have made a motion and the majority has made the motion and you as a Chair must recognize the fact that the majority has asked for, um, asked for this issue to be dealt with.

Chairman Murphy said: It would also have been fair for us to have received information a lot earlier than September 23rd of this year.

Governor Locke said: Oh, excuse me, Mr. Chair, our last meeting, when was our last meeting?

Chairman Murphy said: July 22nd.

Governor Locke said: July 22nd and I at that time said I wanted to raise this issue and then you said that GA had not given you enough documents.

Chairman Murphy said: And give me the numbers.

Governor Locke said: And I, in fact, made sure that GA got you the numbers and in fact some of your staff had just some meetings with GA on this particular issue around that same period of time.

Chairman Murphy said: And we were delighted to receive some ah, ah, three page write-up, in, ah, early after that meeting. There was some general reference to some numbers, there was absolutely nothing resembling the, the numbers we got in September. And there was, quite frankly, nothing for which to work with. There was no amortization schedules, there was no rent schedules, there was no comparative numbers, there was no way for us to make an economic determination of the viability of this project. And, I had repeated phone calls to have meetings

with me on the topic and I said as soon as you [end of that side of tape – turned tape over and continued]nearly eleven months ago, er ten months ago, at the meeting we said, we don't think a 63-20 is in the best interest of the state. I believe from testimony we received earlier today, at that juncture there was still on-going discussions with Wright Runstad and the General Administration and others regarding this project. That was November 21st, 2002. At the meeting, ah, myself and, and staff were at the meeting as well as Mr. Fukai, Mr. Fredricks and Mr. Donald? And at the time, I said, you know, I'm not going to just arbitrarily say, 63-20's are not in the best interest of the state. That wouldn't be fair to you and the work you've done so far. But I, what I will do is I will take an honest look at the numbers, you supply me the numbers, and I will take a look at it. In all of these discussions, we've gone on and on about potential delays and this going on in the future and whatever, we could have had this discussion a year ago at this table without any pressures whatsoever, had we gotten information. With a project of this size and this dimension, it is incumbent on us to, to make certain that we are doing the right thing. In our view, this project should be done differently. We know from correspondence from you Governor, you probably have a different opinion. I'm not certain a hundred percent, but I'm gathering Lt. Governor has a different opinion from the Treasurer as well. Ah, that's fair, ah, from time to time, reasonable people disagree. The intention on the structure of this meeting was, we had identified sufficiently large numbers of issues that we are not at the place yet, to even if we were to go to a 63-20, to adopt any kind of a resolution because the underlying relationship between the resolution and the tenant agreements and the other associated documents. Because there's been a question raised, significant question raised, as to the financing technique and the net savings to the state of Washington, it is incumbent on us to do further work on it. If after that further work is done and additional information comes before the Committee, I believe then it would be appropriate to move forward. I don't know who wrote the resolution, I presume a bond attorney did, but it, it came under your letterhead and I presume that there was a connection there. But, the counsel to this Committee who assists us and has ably assisted us for many, many years, and has given us wise counsel, has indicated that there are some, there are some definite changes that ought to be made to that resolution. So it, if it's the mood of the Committee to move forward in that direction, which I disagree with, then I think it would be appropriate for us to instruct all the associated parties to work on the identified issues, and give us a clean product to vote on. I understand that the issues with the Port have been resolved in terms of the delays, in terms of the drop-dead date. I am appreciative of the developer and the contractor and their patience in dealing with this. We have had the opportunity for two weeks, two weeks, to look at this. There is no other financing that we have undertaken for the benefit of the citizens of the state of Washington where we have spent so little time on it. It's a bad precedent, it's difficult for me to do. This is an off-balance sheet deal, we've read a whole lot about corporate America and off-balance sheet deals. I'm not suggesting this resembles Enron, but all of their problems were associated with off-balance sheet deals. Let's get a focus on this, I'd be happy to work the Governor and Lt. Governor in a cooperative way to resolve a lot of these issues that have been identified today. But quite frankly, it's too early. Um, I would ask the indulgence of GA in working with their partners, ah, on this development. Ah, when we had the scenario going on the bridge, and that's it, the most recent in our memories, the, the answers we continually got where we've gone too far, we've got a problem, we've got to rush it through, we've got to do this, and, and, and with the cooperation of the Speaker, we said 'wait a minute, slow down'. There's not been one deal I've ever rushed into that I've been happy with. But all of those that we've spent considerable time and effort and

done the homework, I am comfortable, highly comfortable with the result. So my intention on this schedule was that we would have a Finance Committee meeting at ten, we would discuss our normal issues, we would then follow that by the Work Session starting at ten-thirty. I deliberately put in the notice to the media that this was, there was not intended to have official action, knowing full well that there were all these issues, ah, that it will be raised and unanswered questions. And, and this is a \$50 million project. I think it's incumbent on us to make certain before we put our blessing on it, that we have all those questions answered. And we have them answered in a cool, deliberative, focused way. And I, I, I would urge the indulgence of my fellow members on this Committee to proceed with some caution, ah, and, and, in terms of, of the meeting notice, I would ask counsel to give advice.

Tom Morrill said: Um, it's unclear in terms of the conclusion of the ten o'clock meeting. My recollection is that the meeting was concluded, but that is unclear. The ten-thirty meeting clearly calls for no action. Um, the fact that you had a ten o'clock meeting that does have a statement that there is potentially other business before the Committee put some lack of clarity to the issue in terms of whether or not this issue could be acted upon. Um, so we could go back and listen to the tape. My advice would be for the Committee, if you want to vote on this, to schedule another meeting, because the potential if you go ahead and act today and vote, if you want to approve 63-20, that's certainly within your purview and how you want to do it, that's within your purview. If you want a, have a new resolution, you want to have this resolution, you want to have documents come back, that's within your purview. The potential problem if you adopt a resolution today, and it is in violation of the public meeting act, then it's a null action. And then the bonds could not be issued and if they were issued, they would not be valid bonds. And because of such a large project, it's important to the state that the prudent action would be to make sure you properly notice the meeting within 24 hours and then have your request for that. That would be my advice. It's, it's unclear that you could go forward with this action.

Governor Locke said: Is it because there is, ah, ah, ambiguity as to whether or not we adjourned the ten o'clock meeting?

Tom Morrill said: It's both because there is an ambiguity whether you adjourned and also because of the potential discrepancy between the two notices and the fact that the public might have been led to believe that any other business that might have been brought, the ten o'clock would certainly not be the business that would come from your discussion meeting where you said you meant no action would be taken. So there's a potential ambiguity between the two notices.

Governor Locke said: And we have to give how much, how many hours notice?

Tom Morrill said: Twenty-four hours notice.

Governor Locke said: [to Lt Governor Owen] You able to twenty-four hours from now?

Lt. Governor Owen said: I'll find out.

Governor Locke said: Can you catch it?

Lt. Governor Owen said: Yeah.

Governor Locke said: [to Chairman Murphy] Are you available twenty-four hours from now?

Chairman Murphy said: I, ah,

Lt. Governor Owen said: [to Governor] It takes two.

Governor Locke said: [to Lt. Governor] I understand.

Chairman Murphy said: I, have to look.

Hugh Spitzer said: Might give you a chance to, might give you the chance to tinker with the resolution.

Tom Morrill said: Yeah, 'cause the resolution doesn't go out in the public notice.

Chairman Murphy said: Earliest I have for availability is Thursday am at ten-thirty. You okay then?

Governor Locke said: Actually, I'm not. I'm just canceling everything. I'm going to cancel everything. I mean it doesn't matter what day, I have to cancel something, so.

Chairman Murphy said: Yeah, I've got, I'm jammed, ah. And we need to develop what kinds of instructions we want to give this to advisors to the Committee on what work they need to be doing to prepare for this action, or for an action, ah.

[Members walk out of the room to make phone calls, Governor and Lt. Governor whisper between themselves.]

Governor Locke said: Mike? None of our schedules work out, but, ah, we could do it at noon tomorrow.

Lt. Governor Owen said: Well then I have to cancel a bunch of stuff and whatever.

Chairman Murphy said: No, twenty-four hours from today would be the minimum one o'clock tomorrow.

Governor Locke said: Okay. Fine.

Chairman Murphy said: But I'm not available tomorrow.

Governor Locke said: Can't you re-arrange? I have to re-arrange.

Chairman Murphy said: Well, I understand that, Governor, and I'm attempting to be reasonable here. I have a long-standing speaking engagement in Grays Harbor area tomorrow and I'm,

Governor Locke said: That's alright, noon time.

Chairman Murphy said: 'Cept I have travel time in advance of that and I promised them a long time ago, so. Thursday?

Lt. Governor Owen said: [whispering] I have a four o'clock in Seattle, but I don't know what it is. But I can check and see...

Tom Morrill said: You can also participate telephonically if you wanted to do that.

Lt. Governor Owen said: I'll check.

Chairman Murphy said: So are you going to be able to, review of the ...

Governor Locke said: I've always said, I, always ...

Chairman Murphy said: We like Hugh.

Governor Locke said: I like Hugh.

Chairman Murphy said: I do too.

Governor Locke said: I like Hugh. I'm a big Hugh Spitzer fan.

Hugh Spitzer said: Thank you.

Chairman Murphy said: We have ah,

Governor Locke said: Should've been on the State Supreme Court.

Hugh Spitzer said: But then I wouldn't be here.

Chairman Murphy said: We have ah ...

Governor Locke said: It's like Bill Neukom who says ...

Hugh Spitzer said: There you go.

Governor Locke said: He was glad that he lost the race for State Attorney General and now he's set for life.

Hugh Spitzer said: Maybe he'll run again.

Governor Locke said: He's set for life, after being corporate counsel for Microsoft.

Hugh Spitzer said: Life has many interesting twists and turns.

Tom Morrill said: That's right.

Chairman Murphy said: So, we've, we've had some preliminary discussions with counsel relative to the, the proposal, resolutions provided to us.

Governor Locke said: More than happy to have some changes.

Chairman Murphy said: Do you want to have any input on the changes? Or ...

Governor Locke said: I think maybe Hugh and GA can it work out, you know, it's kind of been the lawyers for GA and they can work it out. I mean, if the whole issue is just bringing it for final review, or making the terms substantially similar too, but, or just direction to address some of the issues that Hugh has raised. And, I think a lot of these things would have been in the final lease, like a closure date, and, some of the issues about if there's savings from the project, you know, who gets it. Or how does GA spend it, I mean, that's up to GA or they could use it to say it's pre-paying rent.

Chairman Murphy said: Is it reasonable for this to be accomplished by Thursday morning?

Hugh Spitzer said: Yes.

Governor Locke said: Just to have the points ...

Hugh Spitzer said: Yes, yes.

Governor Locke said: ... in the resolution saying the final lease document shall address these issues.

Hugh Spitzer said: Yes, I've talked with Jay and Cynthia and I'm sure we can work it out.

Chairman Murphy said: As you know, we have historically issued bonds on a competitive basis.

Governor Locke said: Well, let's, let's, Mr. Chair, I move that ah, that ...

Chairman Murphy said: There need to be, I think we need to be operating in a consensus mode as opposed as to motions at this point relative to the open meetings law.

Governor Locke said: All right.

Chairman Murphy said: I don't want to be setting ourselves up for a fall here.

Governor Locke said: All right.

Chairman Murphy said: So I, let's just work on what consensus ...

Governor Locke said: We're available tomorrow late afternoon, that would allow you to get back from Grays Harbor, four-ish, five-ish?

Chairman Murphy said: Is tomorrow afternoon reasonable Mr. Spitzer?

Hugh Spitzer said: We can do it.

Chairman Murphy said: Where is Mr. Potter, can we get a, or who does the notice to the media?

Allan Martin said: Vicki does.

Chairman Murphy said: Vicki does? Is that? [Vicki nodded her head in the affirmative.]

Allan Martin said: When we leave this meeting, then we'll do it.

Chairman Murphy said: So that would be at what time?

Governor Locke said: Either do it tomorrow late afternoon, or first thing Thursday morning?

Lt. Governor said: Like four o'clock tomorrow or Thursday morning.

Hugh Spitzer said: First thing Thursday would ...

Chairman Murphy said: I would just as soon give Hugh a couple more minutes to play with this if we could, and, and ...

Hugh Spitzer said: That would give us all day, we'd get it all squared away.

Governor Locke said: I'd prefer, if I could, late afternoon tomorrow.

Chairman Murphy said: Do we ...

Governor Locke said: Five o'clock?

Lt. Governor Owen said: It's your call.

Chairman Murphy said: I'll try again.

Lt. Governor Owen said: Excuse me. [?-something on table got moved]

Darlene DeRose said: Sorry. Kick it under the table.

Lt. Governor Owen said: Yeah, kick it.

Darlene DeRose said: Kick it.

Lt. Governor Owen said: Yes, you can.

Hugh Spitzer said: This is, is like the signs, baseball signs. Bunt.

Chairman Murphy said: Quite frankly I think it'd work a little bit easier first thing Thursday morning whatever time is acceptable.

Governor Locke said: Oh, I have to, I'm changing a lot of things, either way.

Chairman Murphy said: I am too, so.

Governor Locke said: It's easier, I think to change for tomorrow night.

Chairman Murphy said: Okay, counsel, how do we get out of this meeting? Do we just adjourn?

Governor Locke said: Well, he says that we weren't even in a meeting.

Tom Morrill said: Well, it's a work session so you can just adjourn and then you can agree to your time frame for your next notice for your meeting.

Chairman Murphy said: So, as, just to make sure we are all in consensus agreement as to how we would proceed. Um, the legal issues that Mr. Spitzer identified, we will attempt to have him work all those things out.

Governor Locke said: No, I think we will, we have a proposed resolution that has been prepared by GA with their counsel and Mr. Spitzer has raised some issues that he thinks should, that he thinks that we or the state or this Finance Committee should ensure are in the final documents for the protection of the state. I clearly agree with Mr. Spitzer on that. So we could look and perhaps Mr. Spitzer and GA and special counsel to GA could look at the resolution to ensure that the resolution adequately incorporates those concerns. Not that they have to have been worked out ahead of time because the lawyers may take months or weeks, hours to debate. I mean like the whole notion of closure date, you don't know when you can close until when you actually start the contract, so, but to say that we could have in the resolution, and I would encourage Mr. Spitzer and the people from Preston Gates & Ellis to make sure that the resolution does protect the state by requiring that the final document have these various protections or issues addressed. I think that's basically what Mr. Spitzer was trying to urge us to have.

Chairman Murphy said: So, to give clear direction to counsel, is that it's, is it the general wish of the Committee that he provide such language in the proposed resolution sufficient to address the issues that he raised earlier?

Lt. Governor Owen said: The, the problem with that is that he, he raised issues that would not traditionally be in the document. They are issues that would be negotiated, ah, in the final lease agreement and some of those things there. So I'd be hesitant to say all of the things that he brought up would be in that, that agreement. But there are certain things that are historically or traditionally, ah, or could be addressed in those, in those reasonable ones would be, should be in there.

Governor Locke said: If I understood Mr. Spitzer's comment, he was saying that, these are policy issues that the Finance Committee should be aware of, and that, that we should insure are addressed. And I think if we were to present a resolution that enumerates these issues and directs that the final agreements have these issues addressed ...

Chairman Murphy said: Rather than saying how they are to be addressed, just make sure they are addressed.

Governor Locke said: They truly are addressed. And I'm sure Mr. Spitzer representing the Finance Committee will want to participate in the drafting and review of those documents to make sure that the interests of the state are in fact, addressed in the final documents, if in fact the resolution directs that these issues be addressed.

Chairman Murphy said: Mr. Spitzer.

Hugh Spitzer said: I think it, it can be handled pretty simply. I can get together with GA and special counsel to GA and ah, others. We can work through my, the concerns that I've raised. I can suggest language. The things that we have consensus on can go into a resolution. If there's anything left over that I think should be there but they don't, I can let you know and then you can bring that up or any other issues that you might want to bring up. But I think, my hunch is that we can reach consensus by talking it through. In a sense this is coming to you differently, this is a different type of transaction. Normally you would have four or five document review sessions before you got to this document. And so what we need to do is to have a document that encompasses the most important things and gives you the flexibility to be able to work with it and to make what changes need to be made in later on in the financing documents without getting out of whack with this resolution. I think we should be able to achieve that.

Chairman Murphy said: And one final thing not to belabor things beyond necessary, ah, the, ah, practice of the State Finance Committee in all of tenures ...

Governor Locke said: All of our what?

Chairman Murphy said: All of our tenures. We all started the same time back in '97 if you remember. Ah, was a policy on competitive offerings when debt is issued. That is a standard that we adopted in early '97 and so in keeping with that long-standing practice, I would recommend that we have counsel insert that into the resolution. Is there objection to that?

Governor Lock said: I'm not sure, no. That, that's not what 63-20s are about. Let, let me say this. We have our proposed resolution, we'll work with Mr. Spitzer to have his issues addressed. If the Chair wants to offer amendments to that proposed resolution, then we're, I'm, you know, that's what the executive process, deliberation process is about. If there're technical flaws in our proposed resolution, people can offer amendments. But I trust Mr. Spitzer to, ah, to work with GA and special counsel to have the resolution incorporate the points that he has raised to make sure that the state is adequately protected in terms of all the documents that will ensue, ah, if there is an approval of this, ah, this project.

Chairman Murphy said: Darlene, can you do a 63-20 on a competitive basis?

Darlene DeRose said: They are traditionally sold on a negotiated basis. I wouldn't say that I know every 63-20 that's ever been sold, but I've not ever seen one sold competitively before.

Chairman Murphy said: Um, very clear on what we're doing? Counsel?

Hugh Spitzer said: Yeah, when's the special meeting?

Governor Locke said: I propose five o'clock , five-fifteen tomorrow. That'll make sure everybody's schedules are fine.

Chairman Murphy said: In this room, five-fifteen tomorrow if that's acceptable to the other members and it allows sufficient time for everybody to do all the work and ...

Hugh Spitzer said: Allows them to get a haircut, won't have to cancel it.

Darlene DeRose said: You look great, Hugh.

Governor Locke said: You look great, Hugh. Mr. Chair, before we adjourn, if I can make a comment. I avoided making any statements during this, hoping to reserve them for final vote. But, um, I understand and I appreciate all the work that you and your staff have, have put in, and ah, how much you favor the COP process. There's always been, there's been a recognition that there seems a very slight penalty if you go the 63-20 versus the COP. But the benefits of this partic[ular], what we have to look at is, this is a project with an agreement that's ready to go. If we were to say no to this process, we would have to start over again, and we would have to, if we went a COP route, we'd have to find new bidders or new contractors and that would, we're not talking about the same start date. So that even if we went to a COP process, abandoned this, it would take many months for GA to gear up again. GA also doesn't have Legislative authority to continue making payments with respect to the Port property, nor do

they have the authority, appropriation to go a COP route in terms of the payments that would be required. It may be that the COP is a more ...

Chairman Murphy said: COP authority.

Governor Locke said: It may be that a COP process is ultimately cheaper if we were all starting at the same place. But we're not starting at the same place, and, ah, while your consultant has indicated that there's perhaps a net present value savings of five to eight million dollars if we went the COP route and that's using information where we have assumed, perhaps, higher costs just to be safe, ah, by GA. Ah, but the point is that as you indicated during your presentation, if we walk away from this deal, we also lose several millions of dollars in terms of the Port Authority property. And so we'd come out as you said, a wash. Because we have to, you know, we may save some money by going COP but we lose millions of dollars by abandoning the Port property. Or we have to continue making payments to the Port. Or in lieu of payments, since GA doesn't have the authority to make the payments, we'd have to turn back over part of the property to the Port and that's a loss of valuable real estate the state would have. Now perhaps, if we were starting all over again, perhaps there should have been a process where we examined a COP process versus a 63-20 and have the competition that way. But we're not, and I too, favored, ah, using public financing for the Tacoma Narrows Bridge. But that was with the understanding that we kept the same contractor, we kept the same contracts in place, and all we were doing was substituting the financing.

Chairman Murphy said: We can't do that now?

Governor Locke said: We can not do that in this particular case. We can not do it in this particular case, you'd have to start all over again. And that would be anywhere from nine to twelve months and who knows what the interest rates might be with the COP then. And who knows what the cost would be to the state. Under this proposal, there are fixed lease costs to the state. Any cost overruns on the project are assumed and eaten by the private developer. A regular state project COP, traditional bonding, whatever, cost overruns, just like there are cost overruns and ah, unanticipated costs with the capitol restoration project, the state has to eat up the costs. Under this 63-20, fixed costs, and if there are cost overruns, the private developer eats it because we have fixed lease costs and we know that these lease costs can not exceed what we would normally pay in terms of the other private sector market. Ah, and ah, and ah, so I think that, you know, maybe if we were starting all over again we would look at it differently. We'd have two competitive approaches, but we're not there. This has been worked on since November of 2002 and I don't know that adding another nine months if we were to start it all over, start all over, would give use some of the same cost protections to the state. And we have to, we'd lose money with respect to the property that's been purchased from the Port. And under the terms of the agreement, if we don't build within ten years and that expires now, we either give them back the land or we have to give them some payments in order to keep that going. But GA doesn't have the money to provide those payments, so in lieu of giving them money to hang on to the property, we'd actually have to deed over part of the property back to them.

Chairman Murphy said: Do they ...

Governor Locke said: And that's valuable ...

Chairman Murphy said: The plan we were going to do actually envisions paying \$1.7 million to the Port and that's in the financing ...

Governor Locke said: And that's, but that's paid for out of the private developer right now and not paid for out of the hide of GA, which GA does not have.

Chairman Murphy said: No, we fund the proceeds from the COP, transaction that we could deliver in about six weeks. Be that as it may, you know, I know when I lose an argument, when it's time to just put up and shut up, okay. I'm there. I don't like it, but I'm there. Ah, we've instructed staff to do some good work for us. I am, I am disappointed that we weren't brought in at the start of the project and when we did have a discussion, that the requests that we had were ignored. And that's unfortunate because I think, as you say, we probably would be getting to a different place. We'd get a different conclusion. Ah, because this transaction is so different, I don't want the people sitting in the audience or the readers of the newspaper to get the idea that there's a major policy change in the state of Washington on how we conduct business. We are in the business of getting the most competitive rates for the citizens when we go out and borrow money. That is in their best interests. Um, this one doesn't do it for me. Ah, it's too close to one [o'clock], it's kind of handwriting on the wall. We'll figure it tomorrow. We have the final deal. We'll go there. But what I'm concerned about is the shift of policy and a shift of direction. Ah, we have worked very long and hard, we had meetings yesterday, we have additional meetings today with rating agencies. Ah, we've developed a COP program that not only works for the state of Washington but local governments. I don't want to be sending out the message and I want to clear that we're not sending that message, that this is the preferred method of doing business. It is not the preferred method, at least in my humble opinion.

Lt. Governor said: Mr. Chair?

Chairman Murphy said: Mr. Lieutenant Governor.

Lt. Governor Owen said: I feel, um, obligated to say something, ah, about General Administration. General Administration was charged with doing something and they followed the rules. They did a, ah, the impression is being given here that somehow GA went out and did something that they should not have done or, or was not in the best interest of the state. Ah, if in fact we don't want 'em to use this mechanism, then the Legislature needs to come through and say 'don't use this'. They did everything according to the rules and whether you got information or didn't get information, I don't know. They were not required by law to go to you, ah, in order to start this process and negotiate this, ah, in negotiation of this contract. I, I just feel a little, it's just a little unfair to point at GA as though they have done something wrong in this process. They did use the method, whether you like the method or not, or I like it or not isn't, doesn't matter. They were given this authority to, to do this. Now if, if we find that it's not in the best interest of the state and we don't want them to do it in the future. Fine. We go to the Legislature and we say 'don't allow this any more' and then we, we change it. But, ah, and there is, the other point I wanted to make is that there is a, a tremendous difference of opinion between how much is said that is going to cost the state here and how much their people say it's gonna cost the

state. And in looking, if GA is right, and you take in the fact that we are eliminating the risk of financing and that is now, on theirs, the constructions and everything else is on the contractor, you have to say 'what is the value of that?' and 'is there a dollar value to that?' In my mind, if GA's numbers are right, it pencils out. If GA's numbers are not right, then maybe it doesn't, but, ah, I just wanted to make the point that, that, ah, GA is not a, ah, ah, is not an evil entity that is throwing something at this Committee for us to try to stop them from doing. They followed the law, they did what was presented to them as an option and I believe that they did it in total and good faith. And now it's our job to decide, not all the management details, that's something that concerns me that now we're going to be brought back with all these decisions about what are the finite details of a lease are going to be. I don't want to be in that position every time that we do a financing proposal. That's what we give, that's what we give them the authority to do. We delegate that authority to them to do, but we do, we do need to review. And I, and I agree with that, think, I think that's good. Um, but I do believe that they have done everything in good faith and if you don't want 'em to do it in the future then, we need to go to the Legislature and say 'don't do this any more'.

Governor Locke said: And in fact, what we're trying to do on so many more projects is have the private developer, whether it's a, buildings, or now especially in transportation, where they eat all the costs. We're now moving to design/build where they do the designing, they do the construction and the engineering. And if there are any cost overruns, they, ah, they bear all of the those costs, assume that liability without change orders coming back to the state. Ah, again, if we were starting from the very beginning, maybe we should have a dual competition, two projects. One with the COP and one with the 63-20 and then we can have a fair comparison. Ah, and, yes, there might be a slight penalty to pay in terms of extra costs in the financing of a 63-20, but, um, you know, I'm familiar with the project that we did with 63-20 with this developer in King County. And it's a good project and it's a great building and it worked out well. And apparently there was not that much of a penalty in terms of interest rates had we gone out with the COP process. And, I think that what GA has done has been to err on the high side just to make sure that there are no hidden surprises. And ah, I'm confident that when it's all said and done, ah, it'll be much cheaper than what we're making out to be the worst case scenario. Ah, but we get added benefits right now. Fixed rental costs, all costs overruns born by the private developer and we're not going to start all over. We're not losing nine months. We're not subjecting ourselves to whatever the interest rates might be on a COP process down the road. Ah, ...

Chairman Murphy said: One of the things that was identified on the financials of this early on was that there, in the information provided to us by GA, there is about five million dollars for equipment. Now, historically, we've not financed equipment twenty-five years. And I believe the consultant's recommendation was to bifurcate that from the over-all deal. And then, and then, when tenancy, ah, is anticipated by WSP and the DOT, that that acquisition be done at that time. Clearly we're not going to buy furniture today and hold in storage and have a negative arbitrage on that until completion of the building. And quite frankly, I've never gone down to a furniture store and attempted to buy a couch and got twenty-five year financing. The useful life and, and, the life of the debt are inconsistent. So, ah, I presume that, that GA would agree with that and, he's nodding his head, ah, so, I believe then when we identify the cost of this

project, we would take that piece out and to be a later financed issue that they could then come, um, to the state.

Governor Locke said: No, I, I, ah ...

Chairman Murphy said: Is that something that's okay with you?

Rob Fukai said: I was nodding my head to say we need to look at that financing piece and see if that is, if we can't separate that piece out. I don't know the answer to give you yes or no, but I'll know in an hour. And we'll, we'll take a look at that very closely.

Governor Locke said: All right.

Chairman Murphy said: Anything further to come before us today?

Lt. Governor Owen said: No, I think you've done maxed us out.

Chairman Murphy said: I appreciate everybody's indulgences and attention today. We stand adjourned. [12:25 pm]

STATE FINANCE COMMITTEE
STATE OF WASHINGTON

Michael J. Murphy, State Treasurer & Chairman

Gary Locke, Governor & Member

Brad Owen, Lieutenant Governor & Member

Allan J. Martin
Deputy State Treasurer & Secretary